Life Sciences Law Blog

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BIOTECHNOLOGY LEASING

Special Issues in Leasing Laboratory Space

By Doug Van Gessel

Introduction

Biotechnology laboratory facility leases present unique commercial leasing issues that landlords and tenants should anticipate if they are to achieve successful leases. A diverse industry group, biotechnology companies encompass pharmaceuticals, life sciences, medical devices, medical diagnostics, bioinformatics, biotechnology, and other biosciences and related services companies. The facilities requirements in this varied group cover a broad spectrum. At one end, startup companies are looking for small incubator or generic lab space; at the other end, "Big Pharma" and well-funded biotech companies face complex issues associated with large build-to-suit projects.

Biotech leasing is further complicated by the fact that biotech landlords range in size and sophistication, from large real estate investment trusts (REITs), to speculative developers, to single-building owners wanting to convert their underperforming "Class B" buildings into generic biotech lab space. Although many landlords have specialized in high-quality lab buildings, other landlords have only recently entered the market, attempting to capitalize on what they perceive to be lower vacancy rates and above-market rental rates in this market segment. For these reasons, both landlords and tenants need to be mindful of the significant differences between traditional commercial leasing and biotech lab leasing.

No matter the size or scope of the project, neither landlords nor tenants of biotech lab space can rely on traditional "form" leases to address the many unique and complex biotech leasing issues. When negotiating and drafting a biotech lab lease, both parties must continually focus on their own specific scientific, economic, and legal needs and objectives; however, the success of the biotech landlord-tenant relationship will often depend not on the landlord's or tenant's ability to

impose its will on the other, but on the parties' ability to treat the lease negotiations as the beginning of a "partnership,"[1] with the landlord and the tenant both negotiating to ensure its mutual success. This article will focus on negotiating and documenting several specific issues of particular importance in biotech lab leases.

Once a proper analysis of the respective needs of the landlord and the tenant has been completed,[2] the landlord and the tenant should assess how the lease can best protect those interests while preserving the success of the biotech landlord-tenant relationship. Although every tenant will have its own specific needs (and varying degrees of negotiating leverage), tenants frequently are unsure of their long-term funding, space, and scientific needs. Will the laboratory space need to be upgraded to pilot plant manufacturing facilities? Will office space be convertible to expansion laboratory facilities? These are among the critical questions that parties should carefully evaluate when planning your biotech leasing strategies.

The key to many biotech lab leases is the tenant's ability and willingness to adapt its leasehold premises to the scientific changes that may occur in their business operations. Landlords, on the other hand, generally will focus on preserving their economic returns and maintaining the value of their buildings while eliminating risks. Landlords want to capitalize on the higher rents associated with lab space, but they should understand the risks associated with biotech tenants and the high cost of facility build-out. Biotech laboratory leases require more time and money to prepare than leases for non-biotech commercial space because of the attendant environmental concerns, longer land-carry times, and the unusually high tenant improvement costs (which can exceed the price of shell construction; typical costs and allowances can exceed $100 per square foot).

Five Important Clauses in Biotech Laboratory Leases

The competing goals of landlords and tenants play out in five important clauses in biotech lab leases:

1. **Construction of Tenant Improvements**
2. **Security Deposits, Letters of Credit, Guaranties**
3. **Hazardous Materials**
4. **Increased Building Service and Utilities**
5. **Assignment and Subletting**

Although these five clauses address only some of the many issues that landlords and tenants should consider in biotech lab leases, they have implications that echo throughout the lease. The remainder of this article will briefly address these five lease clauses and their implications for biotech tenants and landlords.

I. Construction of Tenant Improvements.

Some of the first decisions that biotech landlords and tenants need to make are (1) who will be responsible for the design and construction of tenant improvements; (2) what is the scope of the tenant improvements to be included in the tenant improvements budget; and (3) who will own what portions of the tenant improvements. In other (non-biotech) commercial leases, landlords have control over the design and construction of the "shell" building, with tenants having some input in the design (and less frequently, on the construction) of the tenant improvements. Because the initial build-out of lab space is much more specialized and elaborate (and, hence, much more expensive and time-consuming) than building out other types of commercial space, in biotech lab leases the tenant will need to be much more involved in the design and construction of tenant improvements. The landlord may be reluctant to turn over the tenant improvements entirely to the tenant, however. To the extent possible, landlords will want to limit tenant improvements to those that are financeable, reusable, "generic" improvements that will not overload existing building systems or structures.

To memorialize the parties' understanding regarding these and related tenant improvement issues, the biotech lab lease should have attached as an exhibit a detailed tenant improvement "work letter" agreement that carefully addresses the following.

1. **Design and Construct Improvements**. The work letter agreement should state clearly who (i.e., the landlord or the tenant) will design and who will construct the tenant improvements. The work letter agreement also should state: (1) who will prepare the plans for the improvements; (2) what the standards will be for plan approval and selection of the architect, contractor, and significant subcontractors; (3) how change orders will be handled to allow for "value engineering" and other changes to the plans after they are initially approved; and (4) who has responsibility for the costs associated with the tenant improvements (that is, what is covered by the tenant improvement allowance). If the lease simply states that, after lease execution, the landlord and the tenant will agree on the tenant improvements to be constructed, it may be difficult to enforce the lease until the parties agree on the foregoing issues.

2. **Need for Coordination of Teamwork.** The improvements build-out likely will involve contractors, subcontracts, landlord's architect, tenant's architect, space planners, interior designers, facility managers and other consultants. It is very important that the work letter agreement and the agreements between the landlord and the tenant and their respective consultants clearly state how the responsibilities and liabilities for construction risks are assigned.

3. **Commencement Date**. The landlord will want to begin collecting rent as soon as possible. The tenant will want the improvements (both the building shell and all of the tenant improvements) to be completed in time to meet the tenant's business objectives. The typical biotech lab build-out, however, will take longer than the build-out for other commercial space; therefore, it is important to both the landlord and the tenant that the construction begin as quickly as possible and stay on schedule. Definitions of "force

majeure" (events outside the parties' control that delay construction), "tenant delay," and "substantial completion" need careful consideration because the large teams of consultants employed in many biotech build-outs can create problems for construction scheduling and completion. Also, changes in the tenant improvements can mean major changes in the building systems, which, in turn, can affect costs of the building shell construction. The tenant will want to limit what is charged as a tenant delay and as a tenant improvement cost resulting from such changes, because tenant delays typically will not only push out the commencement date, but will also result in the tenant being obligated to reimburse the landlord for increased building shell costs.

4. **Tenant Improvement Allowance**. The landlord will want to minimize its expenses for tenant improvements while maximizing the return on its investment in the improvements. The tenant also will attempt to minimize its expense for tenant improvements and to avoid paying directly for base building improvements that are not specific to the tenant's particular needs. Thus, it is very important that the lease contain a detailed definition of the building shell and a list of the items for which the tenant improvement allowance is to be used. Typically, the landlord will be responsible for the costs associated with the building shell, the main building systems (heating, ventilation, air conditioning (HVAC), water, electrical, sewer, and other services to the distribution point of the premises), core improvements (including elevators and common bathrooms), common areas, and exterior improvements (landscaping, hardscaping, and parking facilities). The tenant will want to include in the tenant improvement allowance "soft" costs (such as the cost of its various consultants) as well as "hard" costs. The landlord, on the other hand, will want to put a cap on soft costs for which the tenant improvement allowance can be used.

   The parties also will need to address how tenant improvement costs that exceed the tenant improvement allowance are to be applied. The landlord will want tenant improvement allowance dollars used first or placed into an escrow account. If the tenant will perform part of the buildout, the landlord may consider a letter of credit or other security for the construction costs to be incurred by the tenant. The construction management fee may be higher than typical (2.5 percent to 4 percent), and the landlord will attempt to reimburse such cost from the tenant improvement allowance.

5. **Longer Lease Terms**. Whereas most office/R&D leases are three to seven years long, the terms of most biotech lab leases are ten or fifteen years, or longer, for the following reasons: (1) to justify higher up-front costs; (2) because the typical period of depreciation of lab equipment is roughly fifteen years; (3) due to the higher tenant improvement costs and the need to amortize them; and (4) the attempt to coincide with the FDA approval process. The lease term is longer, making it less clear what the landlord will want at the end of the term with respect to removal of the tenant improvements. At the end of the lease term, the landlord typically will want the tenant to surrender the premises in generic lab condition. The tenant will need to know what furniture, fixtures and equipment and/or improvements it can remove at the end of the lease term. There may be an equipment lender that provides funding to the tenant, and the tenant will want to provide security interest rights to the lender.

6. **Consent.** Most biotech tenant alterations will affect building systems and will be expensive. The tenant will want substantial flexibility to make alterations the landlord will want substantial control over any alterations. The landlord will want to have consent rights if the tenant's alterations will affect he building systems, its roof, foundation or exterior appearance. From the tenant's perspective, the lease should provide that these consents are not to be unreasonably withheld, conditioned or delayed.

II. Security Deposits, Letters of Credit, Guaranties.

Special factors at work in biotech leasing increase a landlord's risk and, therefore, landlords will want to obtain a larger amount of security in the form of a security deposit and a letter of credit. First, relative to non-biotech commercial leases, biotech lab leases have longer terms and tenant improvement allowances are high. Landlords also must consider the fact that many biotech companies are start-up businesses with high cash burn rates, no track record, no tangible assets, and speculative products. Biotech companies that are subsidiaries of larger pharmaceutical or multinational companies may be able to provide a parent guarantee in lieu of a large cash security deposit. Additionally, the landlord may be underwriting its financing (in whole or in part) by the revenue stream that is to be generated by the lease. Consider the following implications.

1. **Security Deposits**. Landlords typically will require cash security deposits of six to twelve months' (and longer) worth of base rent. Landlords should adjust these numbers up or down to make sure that there is enough security to cover (at a minimum) up-front lease costs (e.g., brokerage fees and tenant improvements) and the cost to evict a defaulting tenant.

2. **Letter of Credit**. Assuming the tenant or its guarantor has sufficient creditworthiness or collateral, for a small fee (typically, one percent per year of the amount of the letter of credit), a tenant can have its bank issue to the landlord a letter of credit to secure the tenant's obligations under the lease. The letter of credit may allow the tenant to use its cash or other collateral as working capital instead of tying it up in a security deposit. After receiving an appropriate letter of credit, the landlord may enter into a lease that it otherwise would not have entered into because of the tenant's lack of creditworthiness.

   Bankruptcy laws, as well as many state laws, supersede lease provisions regarding how much money landlords may collect as damages from a defaulting tenant. Thus, a cash security deposit (which most courts consider to be the property of the tenant's bankruptcy estate) is more likely to be tied-up (or even partially refunded) by the bankruptcy court than a letter of credit would be. (Most courts consider letters of credit to be an independent obligation of the issuing bank.) If the tenant files for bankruptcy, the amount of the security deposit that the landlord may retain upon the tenant's default under the lease also may be subject to a cap in the amount of one year's rent.

3. **Guaranties**. To reduce the amount of security put up by the tenant, a landlord may be willing to agree to a parent guaranty; however, the landlord will want the guarantor to waive certain statutory rights and will need to make sure that the appropriate court can assert jurisdiction over the guarantor if a claim must be made under the guaranty. (This jurisdiction is especially important if the guarantor is a foreign corporation.)

4. **Additional Security**. The landlord and the tenant should explore other security options. Some options to consider are lease bonds (similar to a letter of credit but obtained from a surety company instead of a bank), letters of credit for the tenant's construction obligations, and completion bonds. The landlord also may want to (1) require that the tenant periodically provide financial information and (2) to have the right to declare a drop in net worth below a pre-agreed amount to be a default under the lease. A tenant should limit the number of times a landlord may request such information (e.g., no more than twice in any twelve-month period). Also, depending on the tenant's particular financial status and burn rate, the tenant may be able to negotiate a decreased security deposit if the tenant timely pays rent for a substantial period, or if the tenant's financial condition improves.

III. HAZARDOUS MATERIALS

Biotech companies almost always use some hazardous materials (possibly including radioactive materials), and, under environmental and tort laws, a landlord can be held labile for hazardous materials contamination caused by its tenants. (For example, the laws may hold the landlord jointly and severally liable with the tenant for costs associated with the release of hazardous materials.) Due to the liabilities and the high costs of removal, remediation, and tort damage awards, landlords and tenants must protect themselves through lease provisions.[3] Following are some of the implications to consider.

1. **Representations and Warranties of Landlord**. A tenant will want to avoid assuming pre-existing hazardous materials liability associated with the premises, including liability resulting from the use of the premises by prior tenants or occupants. Because pre-existing problems are not always readily identifiable, tenants should insist that their landlords represent that no hazardous materials have been released on the premises prior to the lease commencement date. Landlords should be willing to give this representation, but they may want to qualify the representation by expressly stating that it is made "to the best of the landlord's knowledge." (In California, for example, such a representation is required under the Health & Safety Code.) Tenants also should require landlords to warrant that the landlords will pay all costs associated with any pre-existing hazardous materials within or on the premises, and that the landlords will not pass on these costs to the tenants as part of the operating expenses under the lease.

2. **Representations and Warranties of Tenant**. Biotech landlords typically will insist that a tenant warrant that it complies with all applicable environmental laws and regulations. Although this may be sufficient for most commercial leases, the landlord of a biotech lab

facility should take special care to include within the warranty references to the standards, practices, directives, and guidelines of all environmental agencies that may not be covered in general compliance-with-laws clauses.

3. **Entrance and Exit Phase I or Phase II Environmental Tests**. Because contamination problems may not be readily identifiable by a potential tenant entering into a lease, and because contamination problems may not manifest until years after a tenant has surrendered a premises, it is important to establish a baseline for the environmental condition of the premises, at the beginning and at the end of the lease term. Entrance and exit environmental assessments should be considered as inexpensive insurance policies; both the landlord and the tenant will have documentation of the environmental condition of the premises prior to the tenant's occupancy. This documentation should evidence what, if any, contamination was caused by the tenant after the tenant commenced its occupancy of the premises. The tenant can point to the exit environmental assessment to demonstrate that contamination found later was not caused during its tenancy. The landlord usually pays for an entrance environmental assessment; the tenant usually pays for an exit environmental assessment.

4. **Reporting Obligations of Tenant**. Landlords typically require biotech tenants to submit periodic reports and notifications of any violation of hazardous materials laws. In addition, the landlord should impose on the tenant a duty to notify the landlord if the tenant discovers contamination at the premises, whether or not such contamination triggers an investigation or prosecution by an enforcement agency.

5. **Remediation**. Whenever possible, the landlord will want to shift to the tenant the obligations to clean up any hazardous materials in the premises, and the lease should specify how clean is "clean" in this context. The lease also should state the standards by which environmental cleanup will be measured. The applicable standards may differ based on the use of the premises, as well as on whether state or federal standards (or both) will be followed. Any standards of environmental cleanup higher than actionable state or federal standards may be prohibitively expensive to meet, and those standards probably are not covered by any insurance coverage carried by the landlord or the tenant.

6. **Environmental Indemnity.** The landlord should insist that the tenant indemnify the landlord from liability for all costs, losses, damages, expenses or fines associated with hazardous materials releases that are attributable to the tenant. On the other hand, the tenant should insist that the landlord indemnify the tenant to the extent any hazardous materials release is attributable to pre-existing conditions or use, and the tenant should try to get language in the lease pursuant to which the landlord will indemnify the tenant from all liability resulting from environmental claims arising from the acts or omissions of other tenants or occupants in a multi-tenant setting. The distribution of environmental risk must be clear and unequivocal in the lease. The landlord and the tenant each should attempt to limit the circumstances under which it will be deemed liable for indemnification to the other (e.g., liability for hazardous materials migration and waste stream separation) and the standard under which indemnification will be triggered (e.g., the "gross negligence" or "willful misconduct" standards versus the "passive negligence"

standard). The lease should specify that the indemnity clause will survive the expiration or earlier termination of the lease term.

7. **Use Permits; Compliance with Laws**. The lease should make it extremely clear which party (usually the tenant) has the obligation to obtain the permits and approvals necessary for the tenant's use of the premises. The landlord will attempt to disavow all such obligations. The tenant should provide the landlord with copies of all relevant permits and approvals.

8. **Broad Exculpation Provisions**. Because the landlord generally will have limited profit potential under a biotech lease, the landlord should guard against contingent liability. The lease should contain provisions (e.g., traditional non-recourse and limitation of liability clauses) to limit the landlord's liability under the lease to the landlord's interest in the building.

9. **Damages**. The tenant may attempt to reserve in the lease a right to sue for consequential damages. The lease should address who (or whose insurance) should pay damage if a critical test being undertaken in the premises is disrupted by the landlord's negligence.

10. **Insurance**. The landlord may require that the tenant carry "pollution" insurance. Because pollution insurance may become unavailable or cost-prohibitive during the lease term, the tenant's inability to obtain such insurance should be addressed. Both the landlord and the tenant should carry sufficient pollution insurance, and should name each other as an insured party on such policies. Tenants should work closely with their attorneys and/or insurance brokers to make sure that the insurance requirements required by the landlord are commercially reasonable, given the specific use of the premises by the tenant.

11. **Access and Security**. If the landlord will want to conduct testing in, on, or about the premises, the lease should provide for a right of entry by the landlord and describe the procedures or conditions for any such testing to be conducted (e.g., landlord is not to disrupt the tenant's operations). A landlord often will want to add a provision to the lease allowing the landlord to enter the premises to confirm that the tenant is in compliance with all of the lease's hazardous materials provisions. The tenant, on the other hand, may have very legitimate security, risk management, and intellectual property-related reasons to limit the landlord's access to the premises. For example, if the landlord conducts maintenance, repairs, or investigations in a restricted area, a costly clinical trail could be adversely affected. Often, a good solution is to agree that the landlord will be allowed entry to the premises if there is a reasonable basis to believe that the tenant's activities have caused contamination. Even then, a tenant will want as much advance notice as possible of the landlord's access, and it may require that the landlord's employees be accompanied at all times by a tenant representative. Even if landlord is allowed restricted access, the tenant may want the landlord to sign a non-disclosure agreement to protect the tenant's intellectual property rights and trade secrets.

IV. Increased Building Service and Utilities.

1. Biotech users, in the landlord's opinion, may require unusually high levels of HVAC, plumbing, electrical, and janitorial services. The tenant will need to make sure the standard lease provisions for services and utilities are tailored to the tenant's unique intended use of the premises. Consider the following implications when negotiating and drafting lease provisions for services and utilities.

2. **Responsibility for Costs.** Who will service the building systems? The landlord will attempt to make sure that the tenant pays for all of such costs, plus the cost of replacing building systems, regardless of who is responsible for them. The tenant also will need to be vigilant to ensure that the operating expense language of the lease restricts the landlord's ability to pass through to the tenant (1) capital improvement costs that benefit the building, and (2) any costs to comply with government requirements. In addition, the tenant should reserve the right to audit the landlord's operating cost statements. Traditional allocation of responsibility for maintenance and repair may need to be re-thought if the tenant's equipment affects building systems, roof, and structure. It is more typical for the tenant to do this work in biotech lab space than in traditional commercial space.

3. **Systems**. The lease should clearly state (or attach as an exhibit) the capabilities and specifications for planned electrical, plumbing, HVAC, and janitorial services. Any after-hours or excessive use can result in significant additional charges, which should be calculated to reimburse the landlord for the excessive wear and tear.

4. **Pro-ration of Charges**. In multi-tenant situations, the lease should take into consideration the different uses of different tenants. Sometimes traditional pro-rata share concepts do not work in biotech leases because facilities use is not the same over the entire building or project. (A biotech lab, for example, will have much higher HVAC use than office space.) Often, separate metering is impractical and cost prohibitive. The landlord and the tenant should carefully analyze the tenant mix to determine the most equitable way to charge biotech lab tenants.

5. **Janitorial**. The tenant may have risk management, hazardous materials, and confidentiality issues that require the tenant to perform its own janitorial services. The landlord typically will agree to this requirement, but will want some control over the quality of tenant-provided services. The tenant and the landlord also should agree on an appropriate adjustment to the operating expense charges when a tenant furnishes its own janitorial services. The tenant should still pay for its share of janitorial services for the common areas, however.

6. **Property Management Fees**. Although the tenant may do most of the work, the typical biotech lab landlord will charge a property management fee of from three percent to five percent of the tenant's gross revenues. Given the higher rents in biotech lab leases, tenants should insist that the property management fees are not fixed at a percentage of

gross rents. If the landlord is unwilling to agree to cap the property management fees to the actual cost incurred by the landlord, the tenant should insist on a detailed accounting of what the tenant will receive for its property management fee.

7. **Extra Equipment Issues**. The tenant's need for special equipment (such as excess HVAC, back-up generators, antennae, liquid nitrogen tanks, and underground storage tanks) must be addressed during lease negotiation. Additionally, the landlord and the tenant will need to consider, for measurement purposes, if the area where the equipment is kept is part of the "premises." The landlord may attempt to create separate licenses for this equipment so that the landlord can "turn off the juice."

V. Assignment and Subletting.

Given the rapidly changing nature of the biotechnology sciences and the associated risk of failure, together _____.

1. _____ lease. (Most leases require that the tenant remain liable, even after the sublease commences.) If, however, the tenant is having difficulty making rental payments, it may attempt to sublease to one or more non-creditworthy subtenants. Landlords will want to use a net-worth test to ensure that any subtenant is able to fulfill the financial obligations of the lease. Applying a net-worth test may necessitate additional security or parent guaranties. Because landlords almost always insist on the ability to require tenants to obtain the landlord's consent prior to a sublease or assignment of a tenant's interest in the premises, the tenant should focus on limiting such consent to specific types of transfers and developing objective standards that will ensure that the landlord does not unreasonably withhold, condition, or delay any required consent. The landlord will want to consider the effect the subtenant or assignee will have on building systems, traffic density, security, and hazardous materials. The landlord also should insist that it retain the right to refuse consent to a sublease or assignment on the grounds that the proposed assignee or subtenant cannot comply with the hazardous materials requirements of the lease.

2. **Bonus Rent**. If the subtenant will be paying more in rent than the tenant is obligated to pay under the lease, the landlord will want some portion of this "bonus rent." The tenant should negotiate that the bonus rent will be calculated to exclude all of the costs that the tenant must incur in subleasing the space (e.g., any changes, alterations, and improvements to the sublease premises; planning, architectural, or design fees or other expenses in marketing the space; improvement allowance; rent abatement or other monetary concessions provided to the subtenant; brokerage commissions incurred by the tenant regarding the sublease; lease takeover costs; costs of advertising the space; and legal fees and costs paid to the landlord relating to the sublease and any previous unconsummated subleases). The landlord and the tenant should analyze whether the value of the tenant's alterations are to be taken into account in determining what constitutes bonus rent. The tenant will want to be reimbursed the unamortized value of

the improvements made by the tenant that were not paid for by the landlord through the tenant improvement allowance. The landlord also should focus on who pays to bifurcate building systems.

3. **Recapture Rights**. The landlord often will insist on the ability to take back (or "recapture") space that the tenant is trying to sublease. Given the strong need of biotech tenants to control who is in their space and their need to be reimbursed for their investment in tenant improvements and alterations, tenants should attempt to remove any recapture right from the lease. If the tenant is not able to do so, the recapture right should be limited. For instance, the recapture right (1) should be limited to only such space as the tenant is attempting to sublease; and (2) should not be applied to a transfer to an affiliate of the tenant. If a landlord elects to recapture space that a tenant is attempting to sublease or assign, the tenant should be given the right to withdraw its proposed transfer, thereby voiding the landlord's recapture of that space.

4. **Assignment to Affiliates**. A biotech tenant should insist on the flexibility to make transfers between related entities without the landlord's consent so long as (1) written notice of the transfer is given to the landlord; (2) the transfer is not intended to circumvent transfer restrictions; and (3) the transferee assumes the tenant's obligations under the lease. A landlord often will agree to this kind of language, but may require an affiliate transferee to pass a "tangible net worth test." The tenant may be able to eliminate this test if the affiliate is able to meet the obligations under the lease, even though it may not have the same net worth as the tenant.

While tenants typically are focused on the economics of the lease, they must make sure to push back on boilerplate language that is designed to protect the landlord but that may be inapplicable or detrimental in a biotech laboratory setting. Biotech leases need to be tailored to the particular needs of the landlord and the tenant. Improper handling of the key lease issues touched on above can doom a biotechnology company to a significant financial drain on precious operating funds. Alternatively, a cooperative lease-negotiation process can ensure mutually beneficial lease documentation that will help secure the tenant's survival, thereby preserving the landlord's economic returns.

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[1] For purposes of this article, the "partnership" between a landlord and a tenant is a cooperative relationship that can have beneficial results for both in achieving their respective business goals. The term "partnership" is not used

in this article to mean a joint venture, limited partnership, or other comparable relationship involving joint liability or the sharing of profits and losses.

[2] A tenant must consider numerous considerations before ever entering into lease negotiations. Site selection, programming, financing, and other early considerations must be taken into account. The landlord will need to conduct its own due diligence of the prospective tenant to assess the tenant's ability to meet the financial obligations of the lease; the risks associated with the tenant's business plan; the risks associated with the science that the tenant plans to conduct; how the tenant's use will affect the building systems, common areas, and tenant mix; what hazardous (including radioactive) materials the tenant intends to use; and other considerations of the unique risks and benefits of a specific tenant. As early in the lease negotiation process as possible, the tenant and the landlord should each assemble a team of experts to assist with pre-lease considerations. Each team should include a real estate broker and an attorney with experience in leasing biotech lab space. Facilities and construction managers and consultants familiar with the unique requirements for the specific buildout of biotech lab space should also be enlisted.

[3] A careful analysis of the prospective site should be conducted before the lease is drafted. The landlord and the tenant will need to conduct due diligence to determine the current status and history of the site or building. Once the due diligence is completed, the economic impact can be properly analyzed and minimized through negotiation and careful drafting of the lease.